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Attorneys for Plaintiff THERESA BROOKE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THERESA BROOKE, a married woman
dealing with her sole and separate claim,

Plaintiff,

vs.

RK MANAGEMENT GROUP, LLC, a
California limited liability company dba
Campbell Inn dba www.campbell-inn.com,

Defendant.

Case No:

VERIFIED COMPLAINT

(Jury Trial Demanded)

Plaintiff alleges:

PARTIES

1. Plaintiff Theresa Brooke is a married woman currently residing in Pinal County, Arizona. Plaintiff is and, at all times relevant hereto, has been legally disabled, confined to a wheel chair, and is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA set forth at 28 CFR §§ 36.101 et seq. Plaintiff ambulates with the aid of a wheelchair due to the loss of a leg.

JURISDICTION AND VENUE

6. Subject matter jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331 and 42 U.S.C. § 12188.

7. The Court has personal jurisdiction over Defendant because it engages in systematic and continuous business here in the State of Arizona, and because it advertises its services via the website, which is the location at which Plaintiff was injured.

8. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred, and the injury complained of occurred here in this District.

ALLEGATIONS COMMON TO ALL COUNTS

9. Plaintiff and her husband are avid travelers to California. Plaintiff has visited California and the Bay Area several times over the last year and plans to return again in September and again in November. Due to Plaintiff's many special needs, she requires the use of lodging rooms that are accessible to her and have the standard accessibility features such as roll-in showers, adequate spacing around the furniture in the lodging room, grab bars surrounding the toilet, and other commonly-accepted accessibility features.

10. Plaintiff cannot lodge at a hotel or inn without the commonly-accepted features of an ADA-accessible room such as a roll-in shower, grab bars surrounding the toilet, shower transfer chairs, wider entry-ways to accommodate Plaintiff's wheelchair, and other commonly-accepted ADA features.

11. Plaintiff has not always been disabled. It was only in 2013 that she became disabled, which is when a disease from which she suffered (lymphedema) caused her to have to make the difficult decision of allowing physicians to amputate her leg so that the disease would not spread the remainder of her body.

1 12. Since Plaintiff became disabled, she has intimate and recent knowledge of
2 how she was treated before her disability and after her disability. Her world became less
3 accessible. Consequently, Plaintiff has engaged in her right as a private attorney general
4 and has enforced numerous ADA laws in federal courts across the Country.

5 13. In anticipation of a her trip for September, Plaintiff went to Defendant's
6 website for purposes of booking a room. Plaintiff had attempted to stay at the hotel
7 before but was deterred by a barrier, which was since remediated. Since Plaintiff
8 requires the use of an ADA accessible room, she attempted to reserve one. Plaintiff
9 entered her desired dates, but the website only offered *non*-accessible rooms for her
10 desired dates. Thinking that perhaps the hotel was simply booked for her selected dates
11 *versus* it not offering ADA accessible rooms at all, Plaintiff tried a few different dates
12 farther out for future trips. Plaintiff tried two months out and four months out, and she
13 encountered the same discrimination.

14 14. Defendant therefore does not allow Plaintiff or other disabled Americans
15 the option of reserving ADA accessible rooms via its online website notwithstanding
16 the fact it allows patrons to reserve *non*-accessible rooms.

17 15. Plaintiff will not book a room at Defendant's hotel until it modifies its
18 policies and procedures regarding its website.

19 16. Plaintiff will check Defendant's website periodically to see if it has
20 modified its policies and procedures to allow her to reserve an ADA accessible room
21 online, and if Defendant does in fact modify its policies, Plaintiff will reserve an ADA
22 accessible room online for Plaintiff's many planned trips.

23 17. As a result of Defendant's non-compliance with the ADA, Plaintiff,
24 unlike persons without disabilities, cannot reserve lodging rooms in the "same manner"
25 as persons seeking *non*-accessible accommodations.

26 18. She also cannot reserve rooms during the "same hours" because the
27 internet does not close whereas phone registration and reservation desks generally have
28 finite operational hours.

1 19. In violation of 28 C.F.R. § 36.302(e)(1)(i), Defendant does not allow
2 disabled Americans to reserve rooms in the “same manner” and during the “same
3 hours” as able-bodied Americans seeking to reserve *non*-accessible rooms.

4 20. Upon information and belief, Defendant does not have a plan or policy
5 that is reasonably calculated to make its website fully accessible to and independently
6 usable by, disabled people.

7 **FIRST CAUSE OF ACTION**
8 **(Violation of Title III the Americans with Disabilities Act)**

9 21. Plaintiff incorporates all allegations heretofore set forth.

10 22. Defendant has discriminated against Plaintiff and other disabled
11 Americans pursuant to Title III of the ADA and 28 C.F.R. § 36.302(e)(1)(i) in that it
12 has failed to make its website reservation system fully and equally accessible to
13 Plaintiff and disabled persons.

14 23. Defendant has violated 28 C.F.R. § 36.302(e)(1)(i) in that it does not
15 allow for the reservation of ADA accessible rooms in the same manner and during the
16 same hours as a patron can reserve *non*-accessible rooms.

17 24. Modification of Defendant’s policies and procedures would neither
18 fundamentally alter the nature of Defendant’s website nor result in an undue burden to
19 Defendant.

20 25. Modification of Defendant’s website to allow for the reservation of ADA
21 accessible rooms thereon is readily achievable due to the simplicity of changing content
22 of websites. Readily achievable means that providing access is easily accomplishable
23 without significant difficulty or expense.

24 26. Conversely, the cessation of compliance with the ADA law is also readily
25 achievable by re-changing Defendant’s website to not allow reservation of ADA rooms
26 online. Therefore, injunctive relief should issue irrespective of Defendant’s potential
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28

1 voluntary cessation pursuant to the Supreme Court's announcement in *Friends of the*
 2 *Earth* case¹.

3 27. Defendant's conduct is ongoing, and, given that Defendant has never fully
 4 complied with the ADA's requirements that public accommodations make lodging
 5 services fully accessible to, and independently usable by, disabled individuals, Plaintiff
 6 invokes her statutory right to declaratory and injunctive relief, as well as costs and
 7 attorneys' fees.

8 28. Without the requested injunctive relief, specifically including the request
 9 that the Court retain jurisdiction of this matter for a period to be determined after the
 10 Defendant certifies that it is fully in compliance with the mandatory requirements of the
 11 ADA that are discussed above, Defendant's non-compliance with the ADA's
 12 requirements that its website be fully accessible to, and independently useable by,
 13 disabled people is likely to recur.

14 WHEREFORE, Plaintiff demands judgment against both Defendants as follows:

- 15 a. A Declaratory Judgment that at the commencement of this action
 16 Defendant was in violation of the specific requirements of Title III of the
 17 ADA described above, and the relevant implementing regulations of the

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 21 ¹ *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 189, 120 S.Ct.
 693, 145 L.Ed.2d 610 (2000):

22 It is well settled that a defendant's voluntary cessation of a challenged
 23 practice does not deprive a federal court of its power to determine the
 24 legality of the practice. If it did, the courts would be compelled to leave the
 25 defendant free to return to his old ways. In accordance with this principle,
 26 the standard we have announced for determining whether a case has been
 27 mooted by the defendant's voluntary conduct is stringent: A case might
 28 become moot if subsequent events made it absolutely clear that the
 allegedly wrongful behavior could not reasonably be expected to recur. The
 heavy burden of persuading the court that the challenged conduct cannot
 reasonably be expected to start up again lies with the party asserting
 mootness.

ADA, in that Defendants took no action that was reasonably calculated to ensure that their website is in compliance with 28 C.F.R. § 36.302(e);

- b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 CFR § 36.504(a) which directs Defendants to take all steps necessary to bring their website into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that the online reservation system is designed and implemented so that ADA accessible rooms can be reserved through the online reservation system;
- c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, payment of costs of suit;
- d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28 CFR § 36.505 and other principles of law and equity and in compliance with the “prevailing party” and “material alteration” of the parties’ relationship doctrines²; and,
- e. Order closure of the Defendant’s website until Defendant has fully complied with the ADA; and
- f. The provision of whatever other relief the Court deems just, equitable and appropriate.

SECOND CAUSE OF ACTION
(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)

29. Plaintiff realleges all allegations heretofore set forth.

² As applicable to ADA cases. See, *Coppi v. City of Dana Point*, Case No. SACV 11-1813 JGB (RNBx) (February, 2015).

1 30. Defendants have violated the Unruh by denying Plaintiff equal access to
2 its public accommodation on the basis of her disability as outlined above, in this
3 instance regarding its online reservation system.

4 31. Unruh provides for declaratory and monetary relief to “aggrieved
5 persons” who suffer from discrimination on the basis of their disability.

6 32. Plaintiff has been damaged by the Defendant’s non-compliance with
7 Unruh.

8 33. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other
9 relief as the Court considers appropriate, including monetary damages in an amount to
10 be proven at trial, but in no event less than \$4,000.00.

11 34. Pursuant to Unruh, Plaintiff is entitled to attorney’s fees and costs in an
12 amount to be proven at trial.

13 WHEREFORE, Plaintiff demands judgment against both Defendants as follows:

- 14 a. A Declaratory Judgment that at the commencement of this action
15 Defendant was in violation of the specific requirements of Title III of the
16 ADA described above, and the relevant implementing regulations of the
17 ADA, in that Defendants took no action that was reasonably calculated to
18 ensure that their website is in compliance with 28 C.F.R. § 36.302(e);
- 19 b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
20 applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)
21 and 28 CFR § 36.504(a) which directs Defendants to take all steps
22 necessary to bring their website into full compliance with the
23 requirements set forth in the ADA, and its implementing regulations, so
24 that the online reservation system is designed and implemented so that
25 ADA accessible rooms can be reserved through the online reservation
26 system;
- 27 c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
28 applicable, payment of costs of suit;

- 1 d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
2 applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28
3 CFR § 36.505 and other principles of law and equity and in compliance
4 with the “prevailing party” and “material alteration” of the parties’
5 relationship doctrines³ in an amount no less than \$3,500.00; and,
6 e. Order closure of the Defendant’s place of public accommodation until
7 Defendant has fully complied with the ADA; and
8 f. For damages in an amount no less than \$4,000.00; and
9 g. The provision of whatever other relief the Court deems just, equitable and
10 appropriate.

11 **THIRD CAUSE OF ACTION**
12 **(Violation of the California Disabled Persons Act, Cal. Civ. Code §§54-54.3)**

13 35. Plaintiff realleges all allegations heretofore set forth.

14 36. Defendants have violated the DPA by denying Plaintiff equal access to its
15 public accommodation on the basis of her disability as outlined above, specifically as to
16 the online reservation system at the subject hotel.

17 37. The DPA provides for monetary relief to “aggrieved persons” who suffer
18 from discrimination on the basis of their disability.

19 38. Plaintiff has been damaged by the Defendants’ non-compliance with the
20 DPA.

21 39. Pursuant to the DPA, Plaintiff is further entitled to such other relief as the
22 Court considers appropriate, including monetary damages in an amount to be proven at
23 trial, but in no event less than \$1,000.00. Cal. Civ. Code § 54.3.

24 40. Pursuant to the DPA, Plaintiff is entitled to attorney’s fees and costs in an
25 amount to be proven at trial. Cal. Civ. Code § 54.3.

26 WHEREFORE, Plaintiff demands judgment against both Defendants as follows:

27 _____
28 ³ As applicable to ADA cases, see *Coppi v. City of Dana Point*, Case No. SACV 11-
1813 JGB (RNBx) (February, 2015)

- a. A Declaratory Judgment that at the commencement of this action Defendant was in violation of the specific requirements of Title III of the ADA described above, and the relevant implementing regulations of the ADA, in that Defendants took no action that was reasonably calculated to ensure that their website is in compliance with 28 C.F.R. § 36.302(e);
- b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2) and 28 CFR § 36.504(a) which directs Defendants to take all steps necessary to bring their website into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that the online reservation system is designed and implemented so that ADA accessible rooms can be reserved through the online reservation system;
- c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, payment of costs of suit;
- d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28 CFR § 36.505 and other principles of law and equity and in compliance with the “prevailing party” and “material alteration” of the parties’ relationship doctrines⁴ in an amount no less than \$3,500.00; and,
- e. Order closure of the Defendant’s place of public accommodation until Defendant has fully complied with the ADA; and
- f. For damages in an amount no less than \$1,000.00; and
- g. The provision of whatever other relief the Court deems just, equitable and appropriate.

⁴ As applicable to ADA cases, see *Coppi v. City of Dana Point*, Case No. SACV 11-1813 JGB (RNBx) (February, 2015)

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on issues triable by a jury.

RESPECTFULLY SUBMITTED this 25th day of August, 2018.

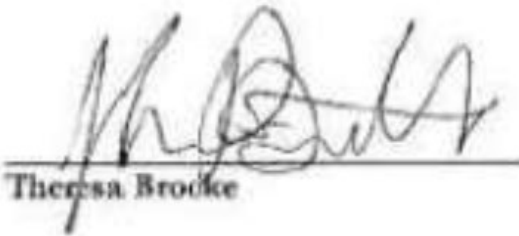
THE STROJNIK FIRM L.L.C.

/s/ Peter Kristofer Strojnik
Peter Kristofer Strojnik (242728)
2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016
Attorneys for Plaintiff

VERIFICATION COMPLIANT WITH R10-3-405

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 25th day of August, 2018.


Theresa Brooke